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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present study identifies challenges to the right to political and public participation and ways to overcome those challenges. It provides examples of best practices and experiences with respect to the implementation of the right to participate in political and public affairs. It also makes recommendations drawn from the contributions received as well as from other available sources.

The study should be read in conjunction with the report on factors that impede equal political participation and steps to overcome those challenges (A/HRC/27/29), which examines the human rights framework and jurisprudence of United Nations human rights mechanisms in relation to participation in political and public affairs.

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I. Introduction

1. The Human Rights Council, in its resolution 27/24, requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a study on best practices, experiences and challenges and ways to overcome them with regard to the promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law, with a view to identifying possible elements of principles guiding the implementation of that right, in consultation with States, relevant United Nations agencies, intergovernmental organizations, the treaty bodies, the special procedures, national human rights institutions, non-governmental organizations and other relevant stakeholders. Notes verbales were sent to all relevant stakeholders on 16 January 2015 and 66 responses were received. The contributions from stakeholders are available on the OHCHR website.[1]

2. Pursuant to the request made by the Council, the present study identifies challenges to political and public participation, presents ways to overcome those challenges and provides examples of experiences and best practices in that regard. It also draws conclusions from the contributions received from stakeholders, as well as from information from other sources, with a view to identifying elements guiding the implementation of the right to participate in public affairs.

3. The study, in particular sections II and III, should be read in conjunction with the report on factors that impede equal political participation and steps to overcome those challenges (A/HRC/27/29), which thoroughly examines the human rights framework and the jurisprudence of United Nations human rights mechanisms in relation to participation in political and public affairs.

II. Human rights framework relating to equal participation in political and public affairs

4. Participation is a hallmark of democracy. It entails timely consultation so as to legitimize the exercise of State power. As articulated in article 25 of the International Covenant on Civil and Political Rights, the right to participation encompasses the rights of the individual to vote and to be elected; to take part in the conduct of public affairs; and to have access to public service. Other international human rights treaties contain similar provisions, which complement the Covenant.[2]

5. In its interpretation of the obligations of States under article 25 of the Covenant, the Human Rights Committee requires that positive measures be adopted to ensure the full, effective and equal enjoyment of participatory rights, including through inclusive, meaningful and non-discriminatory processes and mechanisms.[3] States also should guarantee full and effective access to justice and redress mechanisms to people who have been unduly deprived of their right to participate in political and public affairs.[4]

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[1] See**Error! Hyperlink reference not valid.**

[2] See A/HRC/27/29, para. 8.

[3] A/HRC/27/29, para. 12 and Human Rights Committee, general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right to equal access to public service, paras. 12, 26 and 27. See also A/HRC/27/51, para. 61 and A/HRC/23/36, para. 24.

[4] See A/HRC/27/29, para. 16.

6. The Human Rights Committee's general comment No. 25 on article 25 of the Covenant, as well as jurisprudence adopted by the Committee and other treaty bodies provide guidance on the measures that States should take to implement the right to participate in political and public affairs. In recent years, there has been a progressive evolution of international human rights law and jurisprudence regarding the scope of this right, which has led many stakeholders to call for a revision of general comment No. 25.[5]

7. Free and fair elections constitute an imperative means of giving voice to the will of the people. Article 25 (b) of the Covenant recognizes the right of every citizen to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage, thereby underlining the importance of inclusivity and equality. The Human Rights Committee has clarified the essential elements of this right. Notably, it requires that States parties, in fulfilling their obligations under article 25 (b) of the Covenant, take positive measures to ensure the full, effective and equal enjoyment of electoral rights, without discrimination, as well as the freedoms of expression, information, assembly and association. Those are essential conditions for the effective exercise of the right to vote and must be fully protected.[6]

8. Wide-reaching restrictions or deprivations of electoral rights may not be compatible with guarantees of equality and non-discrimination under international law.[7] The Human Rights Committee notes that the right to vote may be subject only to reasonable restrictions, such as setting a minimum age limit to vote. The Committee also notes that any restrictions on the right to stand for election must be justifiable on objective and reasonable criteria.[8] In that regard, it states that any abusive or discriminatory interference with the registration of voters or candidates for public office and other elements of the electoral process should be prohibited by criminal law and that effective access to justice and appropriate remedies should be guaranteed for people who have been deprived of their political rights.[9]

9. International human rights instruments and mechanisms acknowledge the right of all people to be fully involved in and to effectively influence public decision-making processes that affect them. To ensure full and effective participation in political and public affairs on an equal basis, participatory mechanisms and processes must conform to certain principles. First of all, participatory mechanisms should be established by law[10] and all stakeholders must have access to information in a timely and transparent manner, which implies that State authorities must make every effort to ensure easy, prompt, effective and practical access to information of interest to the public.[11] Participation mechanisms and processes should be sufficiently resourced, non-discriminatory, inclusive and designed so that concerned groups, even the most marginalized, have the opportunity to voice their opinions.

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[5] See the contributions from International Disability Alliance, the European Centre for Not-for-Profit Law and the International Institute for Democracy and Electoral Assistance (International IDEA). Calls for a revision of general comment No. 25 were also made by The Carter Center and Democracy Reporting International, *Strengthening international law to support democratic governance and genuine elections* (April 2012).

[6] See Human Rights Committee, general comment No. 25, paras. 12, 26 and 27 and A/HRC/27/29, para. 12.

[7] See A/HRC/27/29, para. 10.

[8] Human Rights Committee, general comment No. 25, paras. 10 and 15.

[9] Ibid., paras. 10–13; also A/HRC/27/29, para 16.

[10] Human Rights Committee, general comment No. 25, para. 5.

[11] See Human Rights Committee, general comment No. 34 (2011) on freedoms of opinion and expression (art. 19), para. 19.

10. Public participation rights encompass the right to be consulted at each phase of legislative drafting and policymaking; to voice opinions and criticism; and to submit proposals aimed at improving the functioning and inclusivity of all State bodies.[12]

11. Participation requires a long-term and genuine commitment to engage in processes of intensive dialogue regarding the development of policies, programmes and measures in all relevant contexts.[13] The Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters is a good example of the recognition of the right to participation. It links environmental rights with human rights, in particular the right to participation, and is based on three pillars – access to information, public participation in decision-making and access to justice in environmental matters.[14]

12. Article 25 of the International Covenant on Civil and Political Rights also recognizes the right and the opportunity of citizens to have access, on general terms of equality, to public service. To ensure equal access, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens.[15]

13. Participation in political and public affairs underpins the realization of all human rights and is inextricably linked to them. It cannot be considered in a vacuum without taking into consideration structural issues such as poverty or literacy levels. States' contribution to this study confirm that the respect and full exercise of the rights to freedoms of opinion and expression, association and peaceful assembly, and the rights to information, education and access to justice, are prerequisites to an enabling environment for participation in the conduct of political and public affairs.[16] Closing the "digital divide" is also essential to give full effect to the right to participate in political and public affairs, notably to allow disadvantaged groups to obtain information and express their grievances by using new communications technologies.[17]

III. Challenges to the right to participate in political and public affairs

14. Restrictions to the right to participate in political and public affairs, while permissible, must be objective, reasonable, non-discriminatory and provided for by law.[18] As with other political rights, such as freedoms of assembly and association, opinion and expression, any restrictions must be necessary and proportionate. The "essence" of the right

[12] See Convention on the Rights of Persons with Disabilities; Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 8; also A/HRC/13/23, paras. 31–33 and 52.

[13] A/HRC/23/36, paras. 26 and 79.

[14] Economic Commission for Europe, *The Aarhus Convention: an implementation guide* (New York/Geneva, 2000) p. 19.

[15] A/HRC/19/36, para. 12.

[16] A/HRC/27/29, paras. 22–30.

[17] A/HRC/17/27, paras. 60–66.

[18] Human Rights Committee, general comment No. 25, para. 4.

should never be affected.[19] Several international human rights mechanisms have emphasized that limitations should remain the exception rather than the rule.[20]

15. Limiting political participation on the grounds of intellectual or psychosocial impairment and the imposition of linguistic requirements for candidates for public office or the automatic disenfranchisement of detainees, convicted felons or people under guardianship have been found by human rights mechanisms to constitute unreasonable and discriminatory restrictions on the exercise of political and public participation rights.[21]

A. General challenges to participation in political and public affairs

Shrinking of the democratic space

16. Lack of political will or deliberate strategies to monopolize decision-making by those in power are among the main challenges to the realization of participation rights. In many instances, laws are enacted and applied arbitrarily to deny participation and intimidation and persecution are employed to pressure individuals to decide in a particular way.[22] In many countries, persons and organizations engaged in promoting and defending human rights face threats, harassment and insecurity, including when advocating for the right to participate in political and public affairs. The absence of free, pluralistic and independent media also jeopardizes the realization of participation in political and public affairs, since the media can be crucial in making citizens aware of their rights.

17. The shrinking of the democratic space has also been considered by human rights experts as threatening the full enjoyment of civil and political rights and resulting in ordinary people's lives being changed without their input and against their will.[23] Some States impose not only legal but also practical barriers to participation, notably by restricting the Internet and the flow of information online through increasingly sophisticated means. Mass surveillance, the interception of digital communications and the collection of personal data is another chilling factor on public participation, especially when those measures target political dissidents.[24]

General decline in traditional forms of political participation

18. It has been noted by some organizations that voter turnout at general elections in established democracies has declined steadily over a number of decades in the population as a whole,[25] with youth absenteeism being the highest.[26] Many States are also experiencing declining levels of membership in political parties and interest groups. Election results do

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[19] See, for example, Human Rights Committee, general comment No. 27 (1999) on freedom of movement (art. 12), paras. 11–18.

[20] See, for example, A/HRC/20/27, para. 16; and A/66/290, paras. 12 and 17.

[21] Human Rights Committee, general comment No. 25, paras. 10 and 15; and A/HRC/27/29, paras. 32 and 33; also CRPD/C/TUN/CO/1, para. 35; and CRPD/C/ESP/CO/1, para. 47.

[22] See the statement by the United Nations High Commissioner for Human Rights, on "Inclusion and the right to participate in public life", 10 December 2012, available at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12865&LangID=E.

[23] A/HRC/25/55, para. 59; also "'Shrinking' spaces for citizens threatened democracy, human rights experts tell Third Committee as it considers country reports", United Nations press release, 28 October 2014 (GA/SHC/4112).

[24] A/HRC/27/37, para. 14.

[25] International IDEA, *Voter turnout since 1945: a global report* (Stockholm, 2002), p. 85.

[26] See contribution from the Organization for Security and Cooperatin in Europe, Office for Democratic Institutions and Human Rights (OSCE-ODIHR), pp. 8–9.

not always correspond to the wishes of the electorate and political parties around the world have struggled to effectively address economic and other issues of primary interest, leaving individuals feeling disillusioned with what they see as increasingly empty campaign slogans.[27] This lack of trust in political parties, owing notably to democratic shortcomings in their internal structures, has negatively translated into a lower level of public trust in State institutions.

Structural inequalities

19. Some individuals or groups are often denied the opportunity to participate in the conduct of public affairs because of socioeconomic inequalities. Individuals and groups concerned are confronted with a vicious circle: the greater the inequality, the less the participation; the less the participation, the greater the inequality. This perpetuates the privilege of the elite who may be the only ones able to influence formal and informal processes directly.[28]

20. Lack of decision-making power is a universal and basic characteristic of underrepresented and marginalized groups. Their right to participate in political and public affairs is hampered by multiple compounding obstacles. Discrimination and stigma, poverty and mistrust of authorities all limit the possibilities and incentives for individuals belonging to such groups to participate fully in society and make them particularly vulnerable to corruption or co-option.[29]

21. While the general right to participate in political and public affairs is a prerequisite of democracy, it is not, in itself, sufficient. Processes need to be put in place to ensure that all segments of society are able to influence agenda-setting and decision-making. Pro forma participatory processes only reinforce existing power structures and the feeling of exclusion.[30]

22. In some cases, private corporations and lobby groups take precedence over other less-resourced and less-organized voices. The Independent Expert on the promotion of a democratic and equitable international order recently denounced secret negotiations of free trade and investment agreements as being a threat to human rights since they exclude key stakeholder groups from the process. He warned that the reality of economic, political and military imbalance leads to pressures on the weak that have little choice but to bend to various forms of coercion threats, sanctions or carrot-and-stick practices.[31]

B. Challenges affecting women and specific groups

23. Various social groups face specific challenges and discrimination. Intersecting and compound forms of discrimination have an especially devastating effect on the right to participate in political and public affairs. Roma women, for example, have been denied access to political and public participation rights on the grounds of their minority status, citizenship and gender. People living in poverty experience discrimination, not only on the grounds of poverty itself, but also due to membership in other disadvantaged groups, such as indigenous peoples, non-nationals or people living with HIV/AIDS.

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[27] A/HRC/24/38, para. 16.
[28] A/HRC/23/36, para. 14.
[29] Ibid., paras. 12 and 13.
[30] A/HRC/23/36, para. 72.
[31] A/HRC/24/38, para. 27; also OHCHR, "Secret negotiations on trade treaties, a threat to human rights", press release, 23 April 2015, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15883&LangID=E.

Women

24. In its general recommendation No. 23 (1997) on political and public life, the Committee on the Elimination of Discrimination against Women identified a number of barriers to the equal participation of women in political and public life, including traditional cultural values and religious beliefs, absence of social services, violence against women, women's economic dependence on men, negative societal attitudes towards women and harmful gender stereotyping. The Committee further noted that women were excluded from top-ranking positions in Government, the civil service, public administration, the judiciary and justice systems. As of 1 May 2015, the average proportion of women in parliaments worldwide was a mere 22.1 per cent.[32]

25. The Working Group on the issue of discrimination against women in law and in practice identified other obstacles to women's participation in political and public affairs, such as unwillingness of political parties to place women in realistic positions on their candidates lists; the fact that women tend to have fewer resources than men for election campaigns; attacks, threats and sexual harassment against women candidates; and non-recognition of the right of peaceful assembly and freedom of association. At the same time, women who are outspoken as leaders, community workers and politicians often face harassment and stigmatization, as they are perceived as undermining traditional family values.[33] Furthermore, women human rights defenders are exposed to gender-specific threats and violence, including gender-based verbal abuse, sexual abuse or rape, intimidation and murder.[34]

Indigenous peoples

26. In its advice No. 2 (2011) on indigenous peoples and the right to participate in decision-making (see A/HRC/18/42, annex), the Expert Mechanism on the Rights of Indigenous Peoples notes that indigenous peoples are among the most excluded, marginalized and disadvantaged social groups in the world. Discrimination against indigenous peoples has had a negative impact on their ability to freely determine the direction that their own communities should take as well as their ability to have control over natural resources and to participate in decision-making with regard to matters that affect their human rights, including legislation.

27. In her 2014 annual report, the Special Rapporteur on the rights of indigenous peoples identified several obstacles that affect the ability of indigenous peoples to fully enjoy their right to participate in political and public affairs, including the failure or reluctance of governments to recognize indigenous peoples; challenges in the development of practical implementation measures; ongoing negative attitudes towards indigenous peoples on the part of broader societies in which they live; and social and economic conditions preventing the full exercise of indigenous peoples' human rights.[35]

Minorities

28. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities affirms the right of minorities to participate effectively in cultural, religious, social, economic and public life.[36] Yet, such persons remain underrepresented in the political and public processes and governing institutions in most

[32] See www.ipu.org/wmn-e/world.htm.
[33] A/HRC/23/50, paras. 53–76.
[34] A/HRC/25/55, para. 99.
[35] See A/HRC/27/52, para. 11.
[36] E/CN.4/Sub.2/AC.5/2005/2, paras. 42–44.

countries. They are either actively or intentionally restricted from participation or there is a lack of political will to dismantle structural barriers to their full participation.[37]

29. Institutional discrimination can lead to multiple disfranchisements. For example, in many countries there is evidence of overrepresentation of minorities in the criminal justice system. Coupled with restrictions on the right of prisoners to vote, this has a disproportionate impact on the realization of the right of minority groups to participate in political and public affairs.[38] In many cases, minorities also face systemic discrimination in access to civil registration and identity documentation, which further impedes the realization of their right to participate.

Persons with disabilities

30. Some persons with disabilities are unable to participate fully in political and public affairs owing to their legal status, lack of access to information and prejudicial attitudes. In its general comment No. 1 (2014) on equal recognition before the law (art. 12), the Committee on the Rights of Persons with Disabilities, noted that restrictions to legal capacity have been used to exclude persons with disabilities from political participation, especially the right to vote. Some States have an automatic or quasi-automatic exclusion provision in their legislation, denying the right to political participation for all people under a protective measure, regardless of their actual level of functional ability.[39]

31. Furthermore, even when there are no legal obstacles to participation of persons with disabilities, such participation is often hampered by an inhospitable environment and practical restrictions, such as inaccessible polling stations, lack of information, campaign material in accessible formats and a general high level of prejudice.[40]

Other vulnerable groups

32. Non-citizens, including migrants, refugees and stateless persons seldom have a voice in the public and political affairs of their country of residence. The Special Rapporteur on the human rights of migrants noted that groups of migrant origin were frequently underrepresented in the political process even when most of their members were nationals, and that effective citizenship depends on structural opportunities for participation and widespread disposition to use them.[41]

33. Discriminatory requirements or overly restrictive conditions for obtaining citizenship often impede effective participation. In many States, citizenship is unduly denied to minorities, long-term residents, foreign family members of citizens, stateless persons and other groups. Non-citizens, migrants, and refugees are also frequently denied participation in the public and political affairs of their countries of origin, which creates a double disfranchisement.[42]

34. Homeless persons and internally displaced persons live on the margins of society and often face discrimination and lack of access to information. In addition, administrative

[37] See A/HRC/13/25, para. 6, and the Durban Declaration and Programme of Action, adopted at the Durban Review Conference, held in Geneva from 20 to 24 April 2009.
[38] See CCPR/C/USA/CO/3/Rev.1, para. 35.
[39] A/HRC/19/36, para. 38.
[40] See contribution from the International Disability Alliance.
[41] See A/HRC/17/33, para. 65.
[42] Ibid., paras. 65–69.

restrictions, such as proof of residence or identity documents requirements, are likely to prevent them from exercising their right to vote.[43]

35. Lesbian, gay, bisexual, transgender and intersex individuals around the world face multiple obstacles to assert their right to participate in the conduct of public affairs including as a result of discrimination, stigma, violence, legal sanctions and arbitrary restrictions on their freedom of expression, association, and peaceful assembly on the basis of sexual orientation, gender identity or gender expression.[44] In addition, since identity documents are a pre-requisite to effective enjoyment of many human rights, including electoral rights, transgender persons who are unable to obtain identity documentation that reflects their preferred gender are de facto disfranchised.[45]

IV. Best practices and experiences with respect to the right to participate in political and public affairs

36. This section compiles best practices and experiences as reported by States, as well as from other sources, on different forms of political and public participation. Public participation processes have a number of benefits, including improved quality of policy and legislative decisions that are reflective of real needs and enriched with firsthand experience and expertise; enhanced potential for their successful implementation; and ultimately, increased public trust in State institutions.[46]

A. Right to vote and to be elected

37. The features of electoral systems, including candidate lists, district size and threshold levels, can have a major impact on inclusiveness and on the number of persons from underrepresented groups elected to office.[47] Ghana reported that its Representation of the Peoples Law provided for dividing the country into smaller political units to facilitate public participation. In an effort to facilitate voting for all individuals concerned, many States have adopted alternative ways of voting, such as mobile polling stations, postal voting, and advance voting. Australia deploys remote mobile polling teams across the country — by road, air and sea — so that people in remote areas, including indigenous communities, can vote. Poland created separate electoral districts at hospitals, social welfare facilities, detention facilities and students' halls of residence.

38. Electronic voting, if accessible and when guaranteeing the secrecy of the ballot, may also contribute to breaking down the barriers hindering political participation, notably of persons with disabilities, and to increasing turnout. In Estonia, all voters can vote electronically in any election from their homes or another location anywhere in the world. The electronic voting website also provides support for persons with visual impairments.

39. Many States have adopted quotas for underrepresented groups to attenuate conditions that perpetuate substantive inequalities. In recent years, gender quotas have been introduced in countries where women historically had limited participation in politics, as in

[43] Human Rights Committee, general comment No. 25, para. 11; see also contribution from International Organization for Migration, pp. 2–3.

[44] A/HRC/29/23, paras. 48–49, 60–63.

[45] See contribution from the Legal Resources Centre; and A/HRC/29/23, paras. 69 and 70.

[46] See contributions from the European Centre for Not-for-Profit Law and International IDEA.

[47] See contribution from United Nations Department of Political Affairs/Electoral Assistance Division. See also International IDEA, *Overcoming Political Exclusion: Strategies for marginalized groups to successfully engage in political decision-making* (Stockholm, 2013), p. 16.

Afghanistan and Jordan. Quotas work best when accompanied by sanctions if they are not respected and when they are closely monitored by independent bodies, including national electoral bodies and human rights institutions.[48] Once elected, it is crucial that individuals belonging to marginalized groups have equal opportunity to exercise power and authority.[49] This can be partly achieved through training in political debate and negotiation techniques and confidence-building measures.[50]

B. Participation in the conduct of public affairs

40. Full and effective participation in political and public affairs is best ensured when it rests on a solid legal basis. Hungary, Lithuania, Romania and Bulgaria have adopted laws on public participation, which require government officials to consult those affected and to take their views into consideration when making decisions. The Finnish Constitution states that public institutions must promote all possibilities for individuals to participate in social matters and to influence the decisions that affect them. In the Plurinational State of Bolivia, the 1994 Law of Popular Participation has enabled several initiatives emanating from the communities to translate into municipal public policies.[51]

41. Exercise of the right to participation further depends on transparency and on access to complete information. Information that is free of charge, relevant, up-to-date, understandable and made available well in advance of any participatory process enables individuals and communities to make informed choices.[52] Poland has adopted several laws obliging State institutions to publish all draft laws and regulations that are being considered by the Government.[53] In Greece, every municipality has the obligation to have an official website on which all decisions issued by the municipal organs are posted. In the United Kingdom of Great Britain and Northern Ireland, the Freedom of Information Act (2000) entitles any person to make a request for information to a public authority, which has to convey the information no later than 12 days following the date of receipt of the request.[54] In some States, including Costa Rica, Estonia, Finland and France, access to the Internet is recognized as a right.[55] The right to information is best guaranteed when it is made available in a manner accessible to the most disadvantaged, taking into account the constraints they suffer, including illiteracy, language barriers and the "digital divide". In Argentina, indigenous peoples have dedicated radio and television stations, which broadcast information in their languages.

42. Several States have put in place consultative mechanisms which involve organizations of underrepresented groups in the development of legislation and policies. Georgia indicated that it also sought international expertise in that regard. Norway created a contact committee for immigrants and the authorities, which advises the Government on the views of persons with an immigrant background with regard to State policy. Bulgaria established an agency for persons with disabilities, which participates in the drafting of regulatory acts that affect them. The Czech Government has a number of advisory bodies (relating, for instance, to Roma, national minorities, gender equality and elderly people)

[48] A/HRC/23/50, paras. 37–40.
[49] See International IDEA and Kofi Annan Foundation, *Deepening Democracy: A strategy for improving the integrity of elections worldwide* (Stockholm/Geneva, 2012) para. 65.
[50] See International IDEA, *Overcoming Political Exclusion*, p. 83 (see footnote 47).
[51] See contribution from the Economic Commission for Latin America and the Caribbean.
[52] A/HRC/23/36, paras. 60–64.
[53] Ibid., p. 23.
[54] See contribution from the European Centre for Not-for-Profit Law, p. 13.
[55] A/HRC/17/27, para. 65.

that bring together representatives of public administration, local governments, the non-governmental sector and academia. In Estonia, ministries must include representatives of civil society organizations in the preparation of decisions, draft laws and development plans. Croatia recently used a highly participatory consultation process to develop a strategy for the creation of an enabling environment for civil society, and included key stakeholders from the earliest stages of the consultations so that interested groups could submit comments and proposals. Various methods of inclusion were used, from facilitated meetings and working groups to electronic consultations and surveys.[56]

43. Participation shows best results when meaningful decisions, including those on resource allocation, are tabled for consideration and discussion. The Constitution of the Dominican Republic foresees an approbatory referendum for future constitutional amendments that concern fundamental rights. In Germany, some federal states have engaged in a broad and inclusive process to ensure that citizens participate in public sector reform, while several cities have introduced participatory budgeting. Poland reported that it had introduced participatory budgeting at the municipal level. Residents are invited to vote on projects and those which receive the highest number of votes are selected. In Greece, municipalities and regions may establish committees composed of civil society representatives, which are then consulted by local government before it draws up the budget and social policy measures.

44. Participation mechanisms are most effective when they are premised on empowerment and aimed at building the capacity, social capital, confidence, rights awareness and knowledge of individuals.[57] This includes strengthening skills and capacity of the public and of officials, and devoting resources to long-term, sustainable participatory mechanisms. Several States, such as Estonia, have adopted manuals for public institutions to initiate or strengthen participatory practices in the preparation of draft laws, policies and development plans.

45. It is equally important that the right to participation be enforceable by law and that the denial of participation be open to challenge through the courts at low cost. The Austrian Ombudsman Board guarantees legal assistance for all individuals, free of charge and by phone, e-mail or through the electronic complaint form on the institution's website. The Czech Republic offers a system of free or low-cost legal assistance to victims of discrimination and other human rights violations.

C. Right to equal access to public service

46. Several States reported treating all persons in an equal manner based on the principle of open competition for entering public service. However, open competition alone, in situations of deep-rooted structural inequality, may in fact constitute discrimination. In that regard, the Committee on the Elimination of Racial Discrimination stated that to treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same.[58]

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[56] Tina Divjak and Goran Forbici, *Public participation in decision-making process: international analysis of the legal framework with a collection of good practices* (Ljubljana, December 2014), p. 60.

[57] A/HRC/23/36, para. 71.

[58] See Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, para. 8.

47. Australia stated that public service agencies were required to establish diversity programmes, including affirmative measures, to ensure that the diversity of the Australian community was reflected in strategies designed to attract, recruit and retain employees. The Republic of Korea uses a separate recruitment process for some underrepresented groups, while Poland indicated that if a recruitment process resulted in the shortlisting of a person with disabilities, she or he would be considered first. Paraguay and Turkey established, by law, a minimum quota of 5 per cent and 3 per cent, respectively, for the recruitment of persons with disabilities to public service positions. Uruguay has established a public employment programme with specific quotas for persons of African descent, persons with disabilities and transgender persons.

D. Other forms of political and public participation

48. A number of States reported on citizens' initiatives which, when supported by a certain number of signatories, can become legislative proposals to national or municipal institutions. Finland reported that the initiative on legislation on same-sex marriage was most successful, and was subsequently approved by Parliament in 2014. Ireland established a parliamentary online petitions system, which enables members of the public to take their policy concerns directly to Parliament and influence the parliamentary agenda. Some States, such as Poland, Switzerland, the United States of America and the Bolivarian Republic of Venezuela, provide for recall elections, whereby a predefined minimum number of voters can trigger a referendum to remove an elected official from office before the end of his or her term.

49. In recent years, States have used information and communication technologies to promote more efficient service delivery and allow greater public access to information. In 2014, for the first time, all 193 Member States of the United Nations had national websites, which significantly increased transparency and access to information. The United Nations E-Government Survey 2014 ranked the Republic of Korea, Australia and Singapore as the countries with the most transparent and efficient e-Governments.

50. The rise of information and communication technologies has also affected the ways in which citizens perceive political participation and democracy.[59] Online campaigns and protests organized through the Internet have provided new avenues for political mobilization. In Sierra Leone, election observers use mobile phones and the Internet to report irregularities during elections. Social media have often been cited as having played an important role during the 2011 uprisings in North Africa and the Middle East.[60]

E. Best practices relating to women and specific groups

Women

51. States shared best practices on the integration of women in public decision-making. Bahrain established the Supreme Council for Women, which expresses views and makes decisions on issues relating to the status of women and implements programmes for the political empowerment of women. Mozambique involved women's groups in the revision of its land policy framework, which contributed to the inclusion of important legal provisions to uphold gender equality.[61]

[59] See contribution from OSCE-ODIHR, p. 9.
[60] A/HRC/27/33, para. 23; and A/HRC/17/27, para. 2.
[61] See contribution from the Food and Agriculture Organization of the United Nations, p. 2.

52. Several States reported that they encouraged political parties to adopt effective measures to ensure that women are placed in top positions on candidates lists in order to increase their chances of being fully represented in senior positions in party structures. Other States have established temporary special measures, envisaged by article 4 (1) of the Convention on the Elimination of All Forms of Discrimination against Women, such as quotas, which require political parties to include a certain percentage of women in their candidates lists. Legislation in Albania provides for the representation of at least 30 per cent of the underrepresented sex in all government and political bodies, including all decision-making positions in public administration, the judiciary, the police force, peacekeeping missions and senior political and electoral processes. The Electoral Code of Panama requires that nomination lists of political parties presented for primaries and internal elections include at least 50 per cent women. Contributions also signaled the importance of including issues relating to women in election campaigns and platforms and to appoint women to senior decision-making roles in the executive, legislative and judiciary.

53. A number of States indicated that they had codified gender parity in electoral lists, notably through a "zipper" requirement for alternating women and men candidates on party lists.[62] Some States, such as Tunisia, issue sanctions when parties do not comply with the legal measures aimed at ensuring gender equality, such as removing the party's electoral list from the ballot.

54. Public funding can also be an incentive to further gender equality, for example, where allocation of public funds to political parties is made contingent on compliance with requirements for women's participation. In Georgia, political parties with at least 30 per cent women on their candidates lists receive a 30 per cent higher financial assistance than other parties. The Moldovan Parliament approved in the first reading a draft law on financing of political parties and election campaigns, which makes funding contingent on the number of women who obtain elective mandates. In Ireland, political parties that do not select at least 30 per cent women candidates for the general election face losing half of their State funding. In Honduras, 10 per cent of the public funding allocated to each political party is to be used exclusively for the training and advancement of women in politics.

Indigenous peoples

55. Indigenous peoples' right to participate in the conduct of public affairs should be guaranteed in good faith and through the representatives that they have chosen in accordance with their own procedures.[63] Norway reached an agreement on consultation procedures between the Central Government and the Sámediggi (Sami Parliament). The State authorities shall, as early as possible, inform Sámediggi about relevant initiatives that may directly affect the Sami, including on issues such as language, religion, preservation of cultural heritage, education, land ownership and land-use fisheries, mineral exploration, extraction activities, biodiversity and nature conservation. Argentina established the Indigenous Participation Council to ensure the participation of indigenous peoples in all matters affecting their rights.[64]

56. In applying International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169) in their judgements, several national and regional tribunals have found that the non-participation by indigenous groups in consultation or decision-

[62] A/68/184, para. 37.

[63] See Declaration on the Rights of Indigenous Peoples, arts. 5, 18 and 19, and ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

[64] For other best practices with regard to the right of indigenous peoples to participate in the conduct of public affairs, see A/HRC/18/42.

making processes violated their rights and as such, a broad set of measures have been judicially ordered, from invalidation of approval for Government projects, especially in the mining, forestry and energy sectors, to remedies for those affected.[65] In March 2010, the Ecuadorian Constitutional Court declared that mining exploitation in the territories of indigenous, afro-Ecuadorean and Montubian communities, peoples and nations, must always be subjected to prior consultations with the relevant communities, as provided for in the Constitution. In September 2014, a federal judge of the United States of America ordered the state of Alaska to translate information on early voting and initiatives relating to the November 2014 ballot into Yup'ik dialects for Alaska indigenous voters with limited English.[66]

Minorities

57. States ensure participation of minorities by different means. In addition to electoral systems based on proportional representation, measures such as seats reserved for minorities in elected bodies and favorable delimitation of the constituencies contribute to supporting the political participation of minorities.[67] Kazakhstan reported that it made electoral materials accessible to linguistic minorities by translating them into the minority languages.

58. Some States reported that minorities benefited from lower thresholds to enter elected bodies. In Slovenia, the electoral law provides for a separate election for a Roma representative in municipalities that have a significant Roma population if, during the general local elections, no Roma representative succeeded in securing enough votes to be elected. Additional measures include the devolution of certain powers to minorities by means of a federal or autonomous arrangement; establishment of an informal council of minority representatives or a statutory body, which is consulted by the executive on matters of concern to the minority.[68]

59. Once representatives of minorities have obtained a seat in Parliament, their position may be further reinforced by certain measures. In particular, they may be given special procedural rights with regard to questions pertaining to minority issues, which may range from the right to initiate new legislation to vetoing bills on minority issues.[69] In Belgium, the Assembly and the Senate are divided into language groups for certain issues, which then have to be decided upon by a majority in each group and an overall majority of two thirds of votes.[70]

Persons with disabilities

60. Some States, such as Ecuador, reported that they conducted information campaigns and awareness-raising initiatives to promote the participation of persons with disabilities in political and public life. Many States have also adopted a wide range of legislative, policy and practical measures to remove existing physical barriers and improve the accessibility of voting stations. Belarus indicated that blind persons are provided with information materials about candidates in Braille and that the ballot papers have Braille stencils and

[65] See ILO, *Application of Convention No. 169 by Domestic and International Courts in Latin America – A casebook* (2009).

[66] Associated Press, "Judge rules in Alaska native voting rights case", *The New York Times*, 22 September 2014.

[67] Council of Europe, *The Participation of Minorities in Decision-Making Processes*, Expert study, November 2000 (DH-MIN(2000)1), p. 6.

[68] A/65/287, para. 41.

[69] Council of Europe, *The Participation of Minorities*, p. 11 (see footnote 67).

[70] Ibid., p. 11.

voters with poor vision are provided with magnifying lenses. Those measures enable voters with visual impairments to vote independently. States also provided information on the measures adopted to allow persons with disabilities to be accompanied by a person of their choice when casting their vote. Some States reported that they organized regular training opportunities for all officials responsible for elections on how to interact with persons with different impairments and how to support them in the exercise of the right to vote.

61. One of the best ways to guarantee that the measures adopted are appropriate is to involve people with disabilities in their design. Norway indicated that organizations representing persons with disabilities participated in the testing of electoral equipment and that, at the general election in 2009, there was no significant difference in voter participation among people with disabilities and the general population.

62. Lifting all restrictions on the political participation of persons with psychosocial or intellectual disabilities is another crucial step to the full implementation of right to political and public participation.[71] Austria lifted all restrictions on the right of persons with disabilities to vote and to be elected; persons with psychosocial and intellectual disabilities are allowed to exercise their political rights on an equal basis with others.[72]

Other vulnerable groups

63. A growing number of States allow some form of local electoral involvement of non-citizens within their territory.[73] Norway reported providing grants to immigrant organizations to contribute to participation, dialogue and interaction. A number of countries have developed systems of consultation with migrant communities at the national and local levels. In Italy, several municipalities have set up consultative councils for foreigners, who represent either a country or a geographical area.[74] Portugal appointed a high commissioner for immigrants and ethnic minorities, whose role is to consult immigrant organizations on proposed draft legislation and on the implementation of laws that have a direct impact on them.[75]

64. The Committee on the Rights of the Child called on governments to make renewed efforts to ensure that children's views are heard and taken into account.[76] A positive initiative in that regard is the Children in Action project that was launched in South Africa to include children's participation in parliamentary hearings and public debates.[77] In accordance with its Constitution, which establishes the right of children and adolescents to social participation and to be consulted in matters affecting them, Ecuador created an advisory council on childhood and adolescence, in 2007. As regards young voters, in 2012, Argentina lowered its voting age from 18 to 16, thus allowing close to a million and a half young people to be included in the electoral roll. Other countries that allow 16 year olds to

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[71] A/HRC/19/36, paras. 39, 69.

[72] For other examples of best practices regarding the right of persons with disabilities to participate in the conduct of public affairs, see A/HRC/19/36.

[73] Including Azerbaijan, Belarus, Belgium, Bolivia (Plurinational State of), Denmark, Finland, Greece, Iceland, Ireland, the Netherlands, Norway, Republic of Korea, Slovakia, Sweden and certain Swiss cantons where foreign residents have the right to vote and to be elected at the local level.

[74] Council of Europe, *Political and social participation of immigrants through consultative bodies*, 1999 (CDMG (99) 21), p. 46.

[75] Ibid., p. 56.

[76] OHCHR, "UN experts urge real dialogue with children about their rights" press release, 23 September 2014, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15084&LangID=E.

[77] John Wall and Anandini Dar, "Children's political representation: the right to make a difference", *International Journal of Children's Rights*, vol. 19, No. 4 (2011), p. 377.

vote include Austria, Cuba, Ecuador and Nicaragua. Egypt adopted a legal quota, which provides for one quarter of the seats on the local council to be allocated to youth under 35.

65. In order to overcome obstacles to the effective protection of the right of lesbian, gay, bisexual, transgender and intersex persons to participate in political and public affairs, it is crucial for States to combat violence, repeal discriminatory laws and ensure that anti-discrimination legislation includes sexual orientation and gender identity among prohibited grounds and also protects intersex persons from discrimination.[78] Fiji recently added a clause in its Constitution prohibiting discrimination on grounds of sexual orientation, gender identity and gender expression. Anti-discrimination laws have also been strengthened in several States, including Australia, Chile, Cuba, Georgia, Malta, Moldova and Montenegro. Furthermore, Brazil, Canada, France, Norway, South Africa, the United Kingdom of Great Britain and Northern Ireland and Uruguay are combatting violence and stigmatization through anti-hate crime laws, national action plans and public education campaigns aimed at countering homophobic and transphobic violence and discrimination.[79]

V. Conclusions and recommendations

66. **Despite its key importance as a human right in itself and as an enabler of the enjoyment of other human rights, the right to participate in political and public affairs continues to face obstacles to its full realization. Unreasonable and discriminatory restrictions, be they on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or other status, illegitimately limit the exercise of this right.**

67. **Insufficient political will to allow full public participation and legal or practical measures to discourage participation and restrict the democratic space constitute the main challenges to the implementation of the right to participate in political and public affairs. Existing structural inequalities, such as poverty, and a decline in traditional forms of political participation are additional challenges to political and public participation.**

68. **Discrimination, including intersecting and multiple forms of discrimination, and group-specific challenges prevent the full participation of women and marginalized groups, such as indigenous peoples, members of minorities, persons with disabilities and lesbian, gay, bisexual, transgender and intersex persons. Such discrimination ranges from gender stereotyping to non-recognition of indigenous peoples, from lack of representation of members of minorities in governing institutions to physical barriers that render polling stations inaccessible to persons with disabilities.**

69. **To be fully enjoyed, the right to participate in political and public affairs requires the exercise of a number of other internationally protected rights, such as the freedoms of opinion and expression (including access to information), freedoms of association and of peaceful assembly. Those rights must be guaranteed to all, including non-citizens, migrants, refugees, asylum seekers and stateless persons.**

70. **States have taken a number of measures to address the above-mentioned challenges and to increase participation in political and public affairs. With regard to the right to vote and to be elected, several States have adopted alternative ways of voting, such as electronic voting, mobile polling stations, postal voting and advance voting to increase participation at elections. A growing number of States have**

[78] A/HRC/29/23, paras. 19, 78 and 79.

[79] See also A/HRC/29/23, paras. 71–75.

extended limited voting rights to non-citizens and some allow non-citizens to stand as candidates in local elections and be members of the boards of self-governing bodies. Quotas may increase access to elected positions for women, lesbian, gay, bisexual, transgender individuals and members of minorities. Quotas work best when they are monitored and accompanied by sanctions for non-compliance.

71. Full and effective participation in political and public affairs is best ensured when the right itself, combined with the right to equality and non-discrimination, is recognized in national legislation and when limitations to this right are exceptional and justified by reasonable and objective criteria. The right to participate in political and public affairs should be enforceable by law and its denial should be open to judicial challenge. Appropriate remedies should be available if a violation is established.

72. Legal frameworks that include the explicit right of individuals and groups to participate in the design, implementation and evaluation of any policy, programme or strategy that affects their rights, at the local, national and international levels are most conducive to the full realization of the right to participate in political and public affairs.

73. Exercise of the right to participate in political and public affairs further depends on transparency and on access to full, updated and understandable information. This information should be made available free of charge and with sufficient time in advance. Participation in political and public affairs is strengthened when important decisions, such as those on budget and resource allocation, are open for discussion. Participation mechanisms should be premised on empowerment and capacity-building.

74. Equal access to public service, as a component of the right to political and public participation, can be promoted through diversity programmes, separate recruitments processes or affirmative measures.

75. Public life has also been enriched through new forms of participation, such as citizens' initiatives and e-Government, and through the use of information and communication technologies.

76. As regards participation of women in political and public affairs, States reported encouraging political parties to adopt effective measures to ensure that women are placed in top positions on candidates lists so as to have better chances of being elected as well as fully represented in senior positions in the structures of the parties. It is also important to include issues relating to women in election campaigns and platforms and to appoint women to senior decision-making roles in the executive, legislative and judiciary. A number of States referred to the "zipper" requirement for electoral lists, which alternate women and men candidates, and to State funding to political parties being contingent on compliance with requirements for increased women's representation.

77. With respect to indigenous peoples, measures to increase their participation include making information available in indigenous languages and consultation with indigenous bodies. In the event that consultation does not take place, various measures have been judicially ordered, from invalidation of approval for Government projects, especially in the mining, forestry and energy sectors, to remedies for those affected.

78. States also referred to a number of best practices relating to participation in political and public affairs by members of minorities. Some States reported on lowered thresholds for minorities to join elected bodies; others mentioned the system of seats reserved for minorities in elected bodies, favorable delimitation of the constituencies, or the creation of a council of minority representatives. Minorities in

Parliament may also be given special procedural rights, such as the right to initiate or to veto bills regarding issues that directly affect them.

79. Examples of measures adopted by States to implement the right of persons with disabilities to participate in political and public affairs include information campaigns; the removal of existing physical barriers; the availability of information and ballot papers in accessible formats, including through the use of new technologies; and the involvement of persons with disabilities in the design and testing of electoral equipment. Training sessions for election officials and the lifting of restrictions on the political participation of persons with psychosocial or intellectual disabilities are also crucial.